

June 2, 2006
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Federal Communications Commission
Office of Secretary

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Clarification of the Commission's Rules and Policies
Regarding Unbundled Access to Incumbent Local
Exchange Carriers' Inside Wire Subloops
WC Docket No. 01-338
Ex Parte Presentation

Dear Ms. Dortch:

Cox Oklahoma Telcom, L.L.C. ("Cox"), by its attorneys, hereby submits this written *ex parte* presentation seeking prompt action by the Commission on the Petition for Declaratory Ruling filed by Cox on October 27, 2004 (the "Petition"). Grant of the Petition without further delay is necessary to ensure that customers in multi-tenant environments ("MTEs") have the same opportunity to choose among competitive telephone services as customers in individual residences and small business locations. As Cox demonstrated in the Petition, the action or inaction of some state authorities and local incumbent LECs has made it infeasible for competitive LECs to use the inside wire subloops necessary to provide many MTE customers with timely, affordable competitive service. In the absence of Commission action confirming its earlier rulings and clarifying this issue, incumbent LECs continue to develop additional ways to complicate subloop access, thereby thwarting full and fair competition in MTEs.

To counteract the negative effect these incidents are having on telephone competition in many MTEs, the Commission should confirm that competitive LECs have a right to direct physical access to inside wire subloops at incumbent LEC terminal blocks.¹ Only prompt Commission action can ensure that MTE customers will benefit from local telephone competition, as intended by the 1996 Act.

The Scope of the Issue

The issue raised by the Petition has been outstanding for close to four years, and the resulting exclusion of competitive LECs from MTEs is a growing problem. After unsuccessfully

¹ Specifically, the Petition asks the Commission to confirm that, consistent with Commission precedent, competitive LECs have the right to direct physical access to incumbent LECs' inside wire subloops in MTEs at the point where network wiring is disaggregated to feed service to individual customer premises (the "terminal block").

seeking to resolve the issue with SBC (now AT&T) in Oklahoma, Cox sought relief from the denial of direct access from the Oklahoma Corporation Commission (“OCC”) in March 2004. After the OCC failed to enforce Cox’s direct access rights,² Cox filed the Petition with the FCC, which now has been pending for nineteen months.³ AT&T’s initial success in Oklahoma has led that company to try to exclude Cox from MTEs in additional states, and today AT&T is impairing Cox’s service to MTEs in Oklahoma, Kansas, and Arkansas. In fact, during the time this proceeding has been pending, the commission in the neighboring state of Kansas issued an order that parallels the Oklahoma decision in all material respects.⁴ While this issue has remained unsettled, incumbent LECs also have sought to exploit the uncertainty by developing new inside wiring tactics designed to suppress competition.

The combination of unsettled law regarding direct access to MTE terminal blocks and new incumbent LEC inside wiring tactics greatly impairs Cox’s ability to offer competitive telephone service to 50,000 MTE units in Oklahoma, or about one-fourth of the homes passed by Cox’s facilities in the state. In Kansas, that figure is closer to 100,000 MTE units, and in Arkansas it may be as high as 45,000. Affirming competitive LECs’ right to direct access to inside wire subloops at incumbent LEC terminal blocks would help ensure that consumers in MTEs are able to enjoy the same competitive phone alternatives as those who live in single family residences and work in individual small business locations, regardless of the inside wiring configuration in their buildings.

The Pro-Competitive Impact of Commission Action

The Petition presents the Commission with the opportunity to clarify that customers in MTEs should have the same access to competitive telephone service as their counterparts in individual residences and small business locations. If the Commission affirms competitive LECs’ right to direct access to MTE terminal blocks, it will ensure that competitive LECs can provide affordable service to MTE customers. If it does not, incumbent LECs will have the power to deny access to competitive telephone services to MTE residents across the country. As Cox demonstrated in the Petition, initiating competitive telephone service by connecting to the

² The OCC found that state law defined the demarcation point between AT&T’s network and customer inside wiring as the “first jack” of the customer’s premises and permitted AT&T to deny competitive LECs direct access to inside wiring between the terminal block and each customer’s unit.

³ Cox also has filed a Petition for Review of the OCC’s actions in the United States District Court for the Western District of Oklahoma. That case has been stayed by the District Court pending the outcome of this proceeding.

⁴ Petition of CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P. d/b/a SBC Kansas Under Section 252(b)(1) of the Telecommunications Act of 1996, Docket Nos. 05-BTKT-365-ARB, 05-AT&T-366-ARB, 05-TPCT-369-ARB, 05-NVTT-370-ARB, *Order No. 16: Commission Order on Phase II Intercarrier Compensation, Subloop and 911 Issues* (Kan. Corps. Comm’n July 18, 2005). Cox has deferred pursuing this issue in Arkansas until this proceeding is completed.

first jack at an MTE customer's premises requires such intricate, expensive, and time-consuming work that providing service becomes cost prohibitive for carrier and customer alike.⁵ Indeed, denying competitive LECs direct access to incumbent LEC terminal blocks increases individual carrier and customer installation costs by as much as nine times and can delay service initiation by up to 120 days.

These additional costs and operational hurdles are imposed only on competitive LECs; incumbent LECs face no analogous barriers to serving MTE customers because, in many instances, they control the wiring. The UNE provisions of the 1996 Act were designed to prevent incumbent LECs from using their dominant legacy network to short-circuit competition. If AT&T's abuse of the inside wire subloop rules is not curtailed, however, AT&T will defeat that purpose and prevent MTE customers from obtaining the benefits available to customers who happen to live in single family homes or work in individual small business locations. As the Commission recently noted, competitive LECs generally "face substantial fixed and sunk costs when" deploying their own inside wiring in MTE environments,⁶ so the increased costs and service delays that result from AT&T's tactics act as a dead weight on competition, essentially denying MTE residents access to competitive telephone services.

If competitors are granted direct physical access to inside wire subloops, on the other hand, the cost of bringing service to individual consumers is about the same as the cost of serving individual residential or small business customers and the same as serving MTE units in buildings where the terminal block corresponds with the demarcation point. Ensuring that competitors like Cox have timely and direct access to inside wire subloops in all buildings allows immediate competition in MTEs, guaranteeing that MTE customers will realize the lower prices and higher service quality that competition inevitably brings. Moreover, ensuring competitive access stimulates revenues that facilities-based carriers like Cox then can use to deploy their own facilities further. For all these reasons, the Commission has been pursuing parity of access to competitive services between individual and MTE consumers since passage of the 1996 Act.⁷ Recognizing competitive LECs' direct access rights is the only way to make certain that many

⁵ Petition at 7.

⁶ SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18310 (2005); Verizon Communications Inc. and MCI, Inc. Application for Approval of Transfer of Control, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18452 (2005).

⁷ See, e.g., *id.*; Promotion of Competitive Networks in Local Telecommunications Markets, *First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217*, *Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98*, and *Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57*, 15 FCC Rcd 22983, 23002-23005 (2000); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, 3789, 3791-92 (1999); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 15697 (1996).

residents of MTEs are not shut out from the benefits of competition that access to multiple telephone providers creates.

The clarification Cox seeks is nothing more than recognition of its right as a competitive LEC to serve all MTE customers in the same efficient, timely, and cost-effective manner as it serves subscribers in individual premises and MTE customers in other states. This means that Cox technicians installing service in MTEs would be permitted to perform a simple, industry-standard cutover by connecting Cox facilities to the inside wire subloop from the customer side of incumbent LECs' terminal blocks.⁸ This is the proposal Cox made in the Oklahoma and Kansas arbitration proceedings, and it is illustrated by Exhibit B. Performed by Cox technicians, the cutover procedure costs a fraction of what AT&T charges under the OCC's decision.⁹ In addition to minimizing the cost of initiating service, direct access guarantees the continuity of each customer's phone service.

Each of the three options AT&T proposed causes significant additional expense and delay in initiating service due to construction, customer outages, periods of no dial tone, or all of

⁸ Cox has attached a photograph of the outside of an AT&T terminal block at a multi-tenant building in Oklahoma as Exhibit A.

⁹ The three options that AT&T (then SBC) proposed and the OCC adopted each subject Cox to unnecessary, even unworkable, operational burdens and costs. These options are illustrated in Exhibit C. Under Option 1, AT&T would build and own an intermediate box that is separate from and adjacent to AT&T's terminal block. AT&T would have up to 120 days after a Cox request to place the box at the MTE. AT&T would charge Cox for the expense of building the box, but the cost is unknown and would vary from MTE to MTE. Upon the acquisition of each customer at the MTE, Cox would be required to contact AT&T, which would dispatch its own technicians to disconnect that customer's inside wire subloop from the AT&T terminal block and reconnect it to the intermediate box. Cox then would connect its own wiring to the box. Under this procedure, AT&T would charge Cox \$448.78 per customer installation. When this charge is added to Cox's own installation costs, the total costs for Cox would be nearly ten times the cost of the simple cutover procedure Cox performs in most states.

Under Option 2, Cox would be required to build its own intermediate box, but would not be permitted access to the box. As in Option 1, AT&T technicians would be required to disconnect each new customer's inside wire subloop from its own terminal block and reconnect it to Cox's box. Under Option 3, there would be no intermediate box. Instead, when Cox sought to add a customer, an AT&T technician would be required to disconnect that customer's inside wire subloop from the AT&T terminal block. The wire would be coiled and left dangling outside the AT&T terminal block. A Cox technician then would be permitted to connect the subloop to Cox facilities. For both Options 2 and 3, AT&T would charge Cox \$117.68 per installation, although in the case of Option 3, since the AT&T technician does not actually install anything, the charge is broken down into a \$82.35 truck roll charge and a \$35.33 "work function" charge. When this charge is added to Cox's own installation costs, the total costs for Cox would be more than three times the cost of Cox's proposed cutover procedure. Under Options 2 and 3, AT&T does not include testing of the inside wire subloop, so there is no guarantee that the customer's service actually will work when the AT&T technician leaves the site. Under all of these options, the customer is left without service for an indeterminate time unless the Cox technician is present and waiting for the AT&T technician to complete the AT&T portion of the cutover.

these. No such delays or service interruptions occur when Cox employs direct access. This arrangement already is permitted in the many buildings where the demarcation point is located at the terminal block and has not created any notable service disruptions for customers. Moreover, there is no technical difference – and consequently no more danger to incumbent LEC network integrity – between direct access to MTE terminal blocks and direct access to incumbent LEC facilities mandated when Cox seeks to establish service to a customer in an individual premises. Indeed, as Cox showed in the Petition, several states and the Commission already have found that direct access is required to facilitate the MTE competition sought by the 1996 Act, and that direct access presents no danger to incumbent LEC network integrity.¹⁰

The Limited Nature of the Requested Relief

Cox has limited the relief it seeks to only the minimum requirements necessary for competitive LECs to have a fair opportunity to compete for MTE customers. First, Cox does not seek access to incumbent LECs' fiber loops, but only to existing copper inside wiring. The Commission repeatedly has reaffirmed competitive LECs' right to access incumbent LECs' copper inside wire subloops, regardless of whether the facilities on the network side of the incumbent LECs' terminal block are fiber or copper.¹¹ There is, therefore, no conflict between Cox's request and the Commission's policy of refraining from regulation of fiber broadband facilities to encourage deployment of new advanced facilities.¹²

Second, Cox seeks relief only in the market for residential and small business telephone services in MTEs.¹³ Granting the Petition would have no impact on the enterprise market and would not affect any service that requires more than access to a simple twisted-pair subloop. This carefully circumscribed clarification will not disrupt the market for telephone services in

¹⁰ Petition at 16-18.

¹¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Order on Reconsideration*, 19 FCC Rcd 15856, 15861 (2004). Where an incumbent LEC has deployed fiber facilities to the customer premises in an MTE, Cox does not claim a right of access to the incumbent fiber facilities.

¹² See, e.g., Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services Is Granted by Operation of Law, *News Release*, WC Docket No. 04-440 (released March 20, 2006); Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 14853 (rel. Sept. 23, 2005); Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 USC §160(c); SBC Communications Inc.'s Petition for Forbearance Under 47 USC §160(c); Qwest Communications International Inc. Petition for Forbearance Under 47 USC §160(c); BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 USC §160(c), *Memorandum Opinion and Order*, 19 FCC Rcd 21496 (2004).

¹³ These business customers would include convenience stores and dry cleaners and similar customer locations.

Marlene H. Dortch, Esq.

June 2, 2006

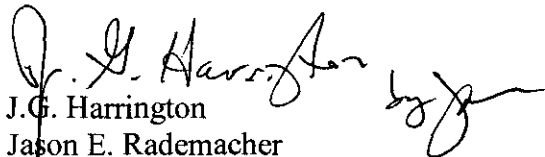
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any way, but instead will prevent incumbent LECs from attempting to defeat the competition in MTEs that both Congress and the Commission have sought to foster.

The record the Commission has received in this proceeding unequivocally demonstrates that the carefully crafted ruling Cox seeks already is supported by the overwhelming weight of Commission precedent, is necessary to ensuring fair competition for MTE telephone customers, and presents no danger to incumbent LEC network integrity. As demonstrated by the OCC's and Kansas Commission's decisions in the Cox/AT&T arbitration proceedings, however, the Commission must confirm its rules in this area to protect against the arbitrary exclusion of competitive LECs from competition for MTE customers at the state, local, and building level. To ensure that MTE customers nationwide have the same access to competitive telephone services enjoyed by other residential consumers and other small business customers, Cox respectfully requests that the Commission expeditiously grant the Petition.

In accordance with the requirements of Section 1.1206 of the Commission's rules, an original and one copy of this written *ex parte* communication are being filed with the Secretary's Office on this date.

Respectfully submitted,


J.G. Harrington
Jason E. Rademacher

Counsel to Cox Communications, Inc.

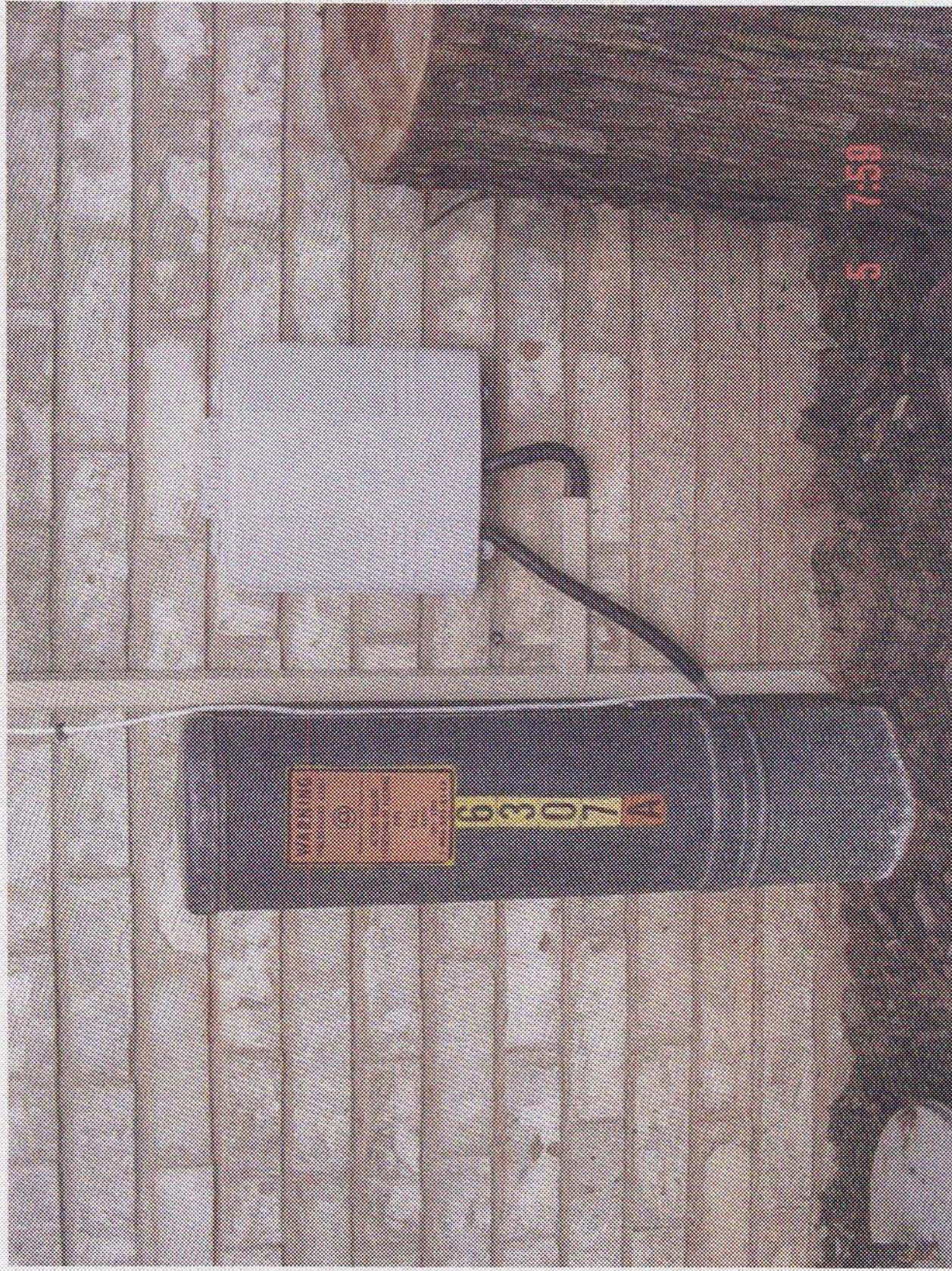
Attachments

cc: Daniel Gonzalez, Esq.
Samuel Feder, Esq.
Thomas Navin, Esq.

EXHIBIT

A

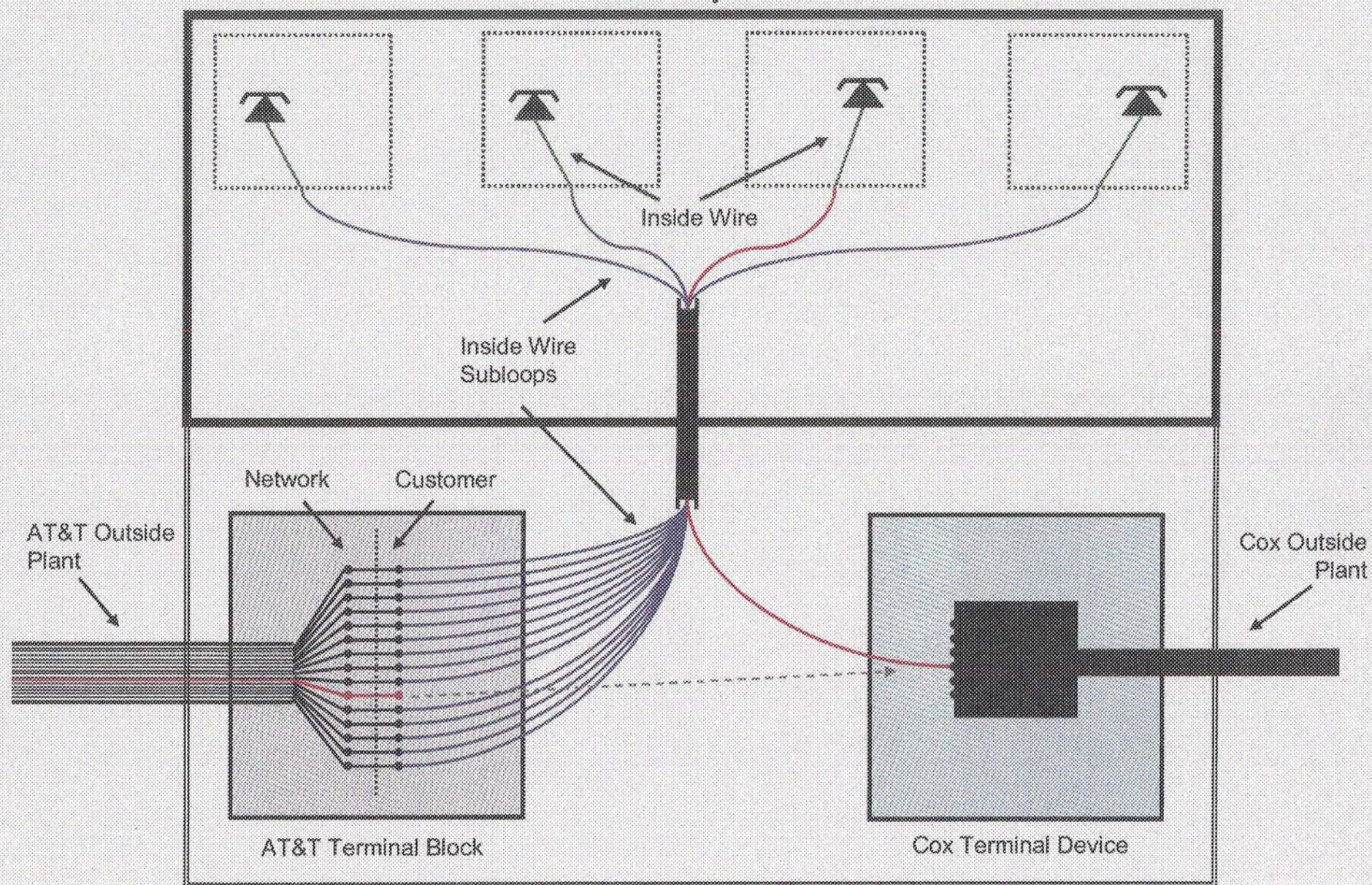
MTE Installation



EXHIBIT

B

Cox Proposal

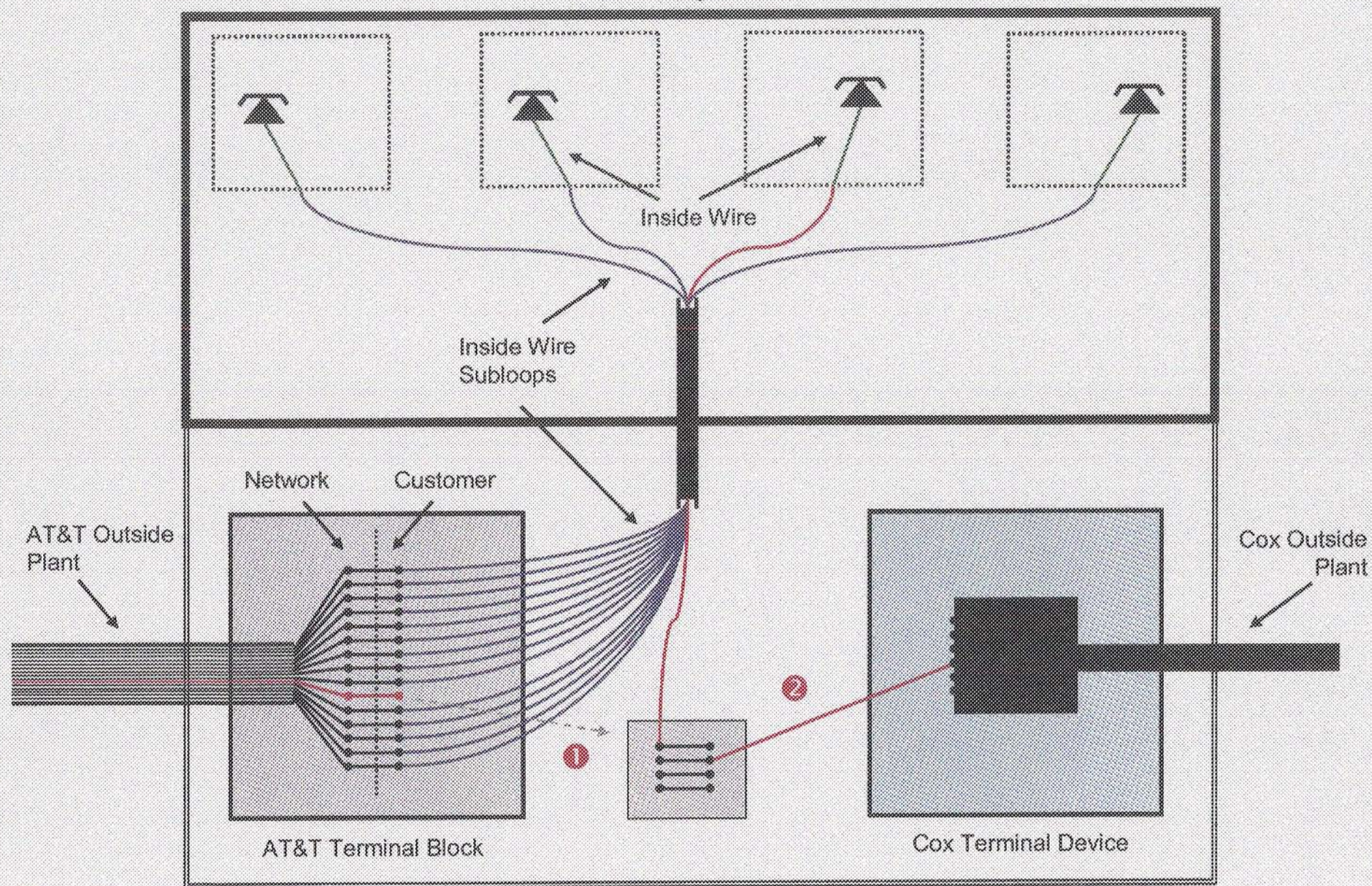


There is no intermediate box. Cox lifts inside wire subloop from customer-side connection in AT&T terminal block and attaches it to customer-side connection in Cox terminal device. No charge from AT&T for cutover.

EXHIBIT

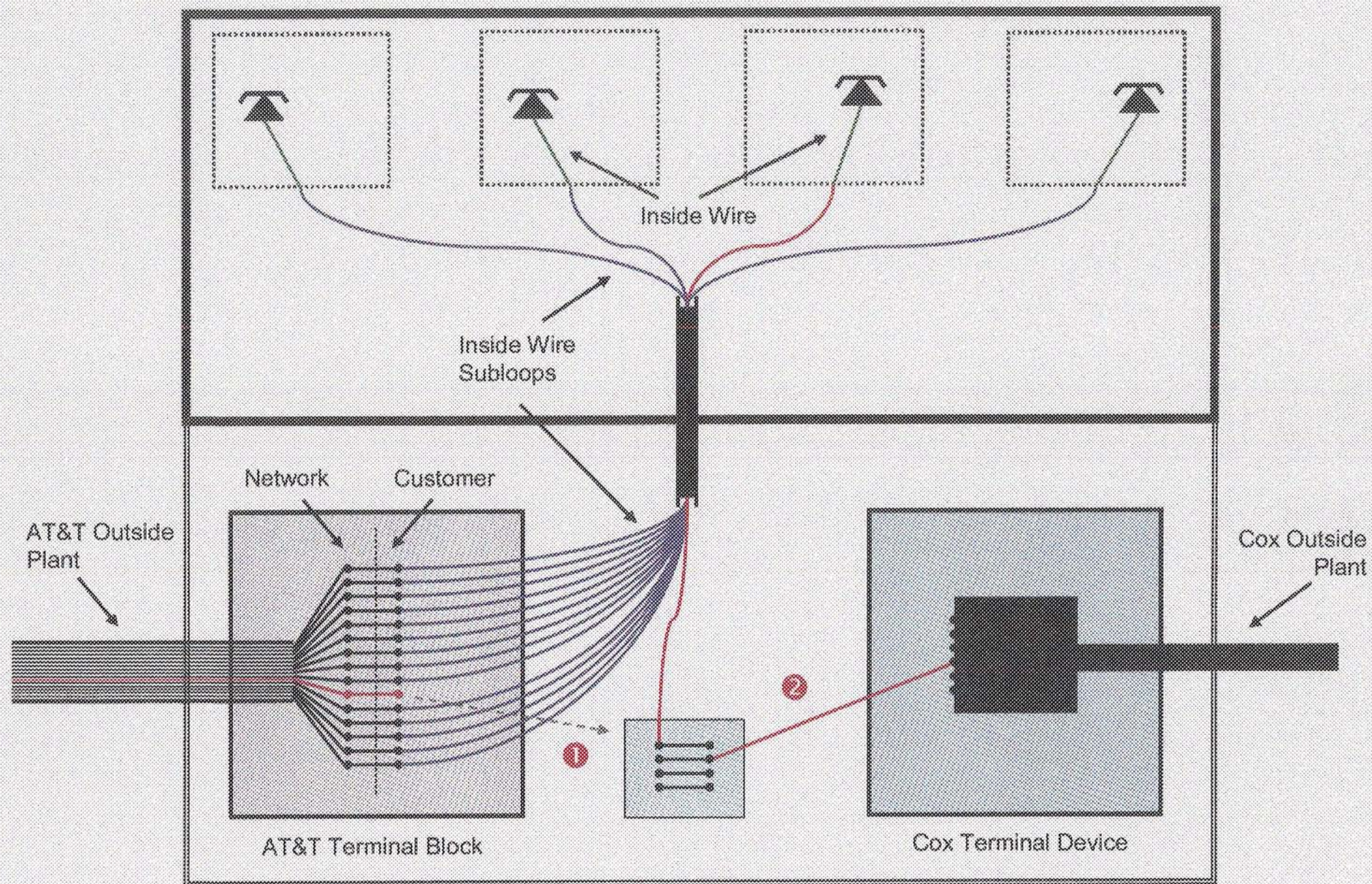
C

AT&T Option 1



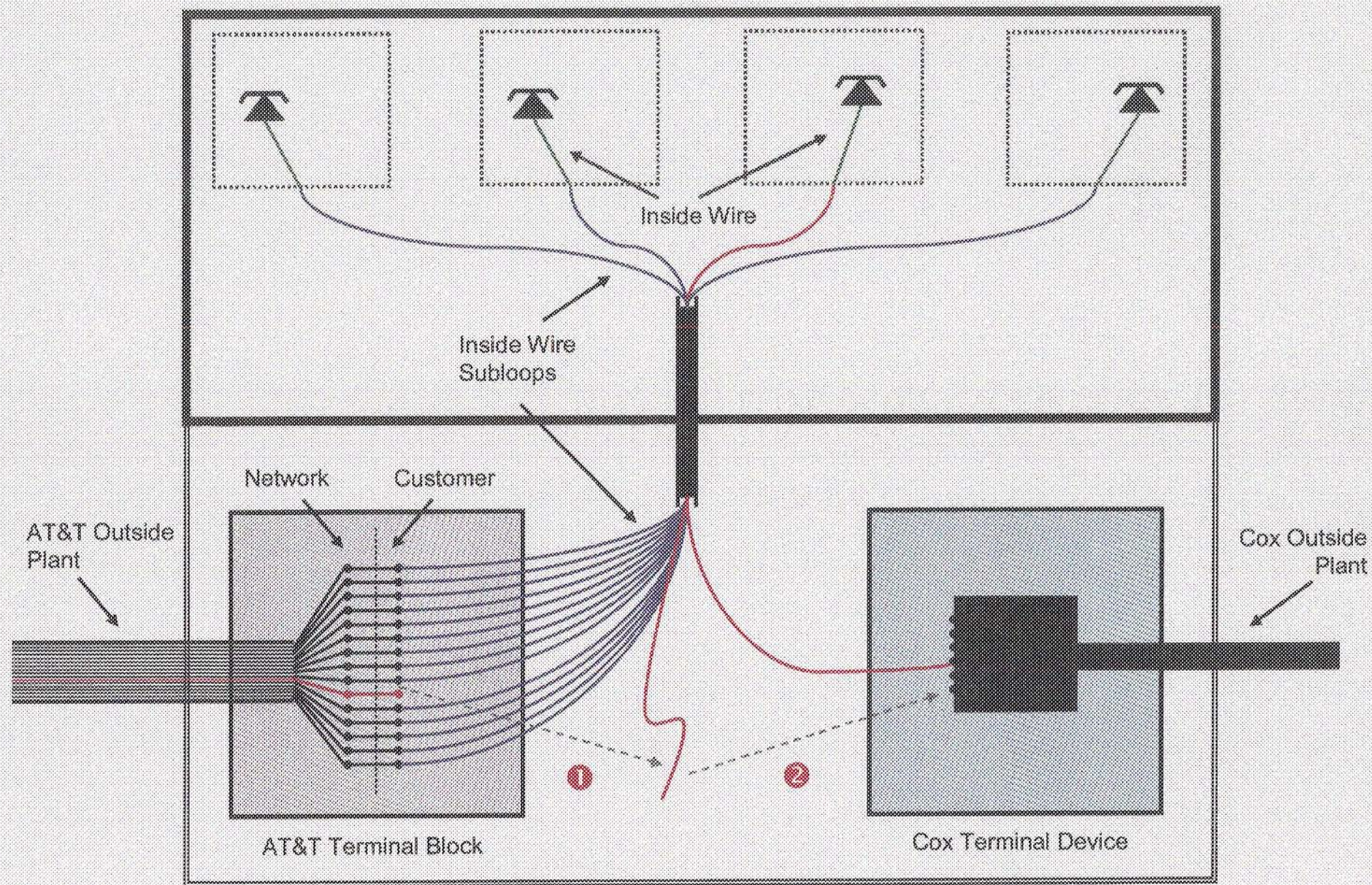
AT&T builds and owns intermediate box; Cox pays for construction. In step 1 of cutover, AT&T moves inside wire subloop to the box. In step 2, Cox connects its own wiring to the box. \$448.78 charge per cutover.

AT&T Option 2



Cox builds and owns intermediate box; Cox cannot enter the box. In step 1 of cutover, AT&T moves inside wire subloop to the box. In step 2, Cox connects its own wiring to the box. \$117.68 charge per cutover.

AT&T Option 3



There is no intermediate box. In step 1, AT&T detaches inside wire subloop, coils it, and leaves it hanging outside AT&T terminal. In step 2, Cox connects the subloop to its own terminal. \$117.68 charge per cutover.